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10/587,944

10/17/2006

Migaku Suzuki

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25944 7590 07/22/2010

OLIFF & BERRIDGE, PLC

P.O. BOX 320850

ALEXANDRIA, VA 22320-4850

EXAMINER

MARCETICH, ADAM M

ART UNIT

PAPER NUMBER

3761

NOTIFICATION DATE

DELIVERY MODE

07/22/2010

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

OfficeAction25944@oliff.com

jarmstrong@oliff.com

|                              |                                      |                                      |  |
|------------------------------|--------------------------------------|--------------------------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/587,944 | <b>Applicant(s)</b><br>SUZUKI ET AL. |  |
|                              | <b>Examiner</b><br>ADAM MARCETICH    | <b>Art Unit</b><br>3761              |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 July 2010.
- 2a) ☒ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-7 and 10-35 is/are pending in the application.
- 4a) Of the above claim(s) 7, 10, 19, 20, 24, 26-30, 32 and 33 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, 11-18, 21-23, 25, 31, 34 and 35 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 August 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claims 1-6, 11-14, 18, 34 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ito et al. (US 4364992) in view of Bogdanski; Michael Scott et al. (US 5830202) in view of Osborn, III; Thomas Ward (US 5895381), further in view of Bruemmer; Mary A. et al. (US 5582606).

4. Regarding claims 1 and 35, Ito discloses an absorbent article, including:

a leak preventer having a sheet and two bags provided separately on right and left of an upper side of the sheet (col. 3, lines 19-19, 24-30, Figs. 4-7, liquid-impermeable sheet 5 having sheet and two bags on left and right),

each of the two bags are liquid-impermeable and have an opening facing with each other (Figs. 4-7, openings of liquid-impermeable sheet 5 facing each other); and

an absorber having at least one layer and containing a super absorbent polymer and capable of absorbing a body fluid, provided in each of the two bags (col. 4, lines 32-38, Figs. 4-7, second absorbing layer 7 containing super water-absorbing polymer). Regarding the limitation of an absorber provided in each of two bags, absorbent layer 7 of Ito extends within both sides of sheet 5. Examiner interprets second absorbing layer 7 as located in "each" of the bags, meeting this claim limitation.

Ito discloses the invention substantially as claimed, see above. However, absorbent layer 7 of Ito is a single element, therefore Ito lacks absorbers provided independently as claimed. Bogdanski discloses an absorbent article (col. 6, lines 37-47, Fig. 1, absorbent structure 1), comprising:

a leak preventer having a sheet (col. 6, lines 37-47, cols. 12-13, lines 65-2, Figs. 1, 12, substrate 7) ;and

two bags provided separately on right and left of an upper side of the sheet and absorbers having at least one layer and containing an absorbent polymer and capable of absorbing a body fluid, provided independently in each of the two bags (cols. 12-13, lines 65-2, Fig. 12, doubled over sections 14, 14' holding absorbent particles 9);

Bogdanski holds wetted absorbent material in separate storage zones, away from an acquisition zone (col. 13, lines 2-8, Fig. 12, wetted gel held in storage zones 13, 13' away from acquisition zone 11). One would be motivated to modify Ito with the independently provided absorbers as taught by Bogdanski to restrain wetted absorbent material since gel saturated with moisture may impede the absorption of further wastes, or cause discomfort to a user. Therefore, it would have been obvious to one of ordinary

skill in the art at the time the invention was made to modify the invention of Ito as discussed with the independently provided absorbers as taught by Bogdanski in order to restrain wetted absorbent material in storage zones.

Bogdanski is silent regarding absorbent particles 9 comprising a super absorbent. Examiner instead cites Ito as teaching a super absorbent material.

Ito and Bogdanski disclose the invention substantially as claimed, see above. Ito discloses an absorbent article in which a ratio of an average left-to-right length W to an average front-to-rear length L is approximately 0.75 (col. 6, lines 45-46, sample size of 300 x 400 mm,  $W / L = 300/400 = 0.75$ ). Therefore, the ratio of Ito does not overlap the claimed range of greater than 1.0.

Bogdanski discloses a sample pad having a W / L ratio of approximately 1 (col. 16, lines 35-45, especially lines 41-45, pad trimmed to 30.5 x 30.5 cm). However, Bogdanski prepares a pad of this size as a sample, and is silent regarding the average dimensions of an absorbent article prepared for a user. Therefore, both Ito and Bogdanski lack the claimed W / L ratio of greater than 1.0 as claimed.

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Osborn discloses an interlabial device (col. 2, lines 39-56, col. 4, lines 9-14, Fig. 1, device 20) comprising a rectangular absorbent pad, optionally comprising impermeable components (col. 5, lines 10-22, Fig. 1, device 20 comprising flexible extensions 24).

Device 20 of Osborn overlaps the claimed ratio of greater than about 1.0:

**width** = 2x 50-115 mm = 100-230 mm (col. 7, lines 1-29, especially lines 8-12, width of each extension 24 measuring 50-115 mm);

**length** = 49 mm (col. 5, lines 31-53, especially lines 34-38);

ratio = **width** / **length** = 100-230 mm / 49 mm = **2.04 to 4.69**, overlapping the claimed range of greater than about 1.0.

Osborn places interlabial device 20 at the same position on a wearer's body as Ito, and dimensions the device to absorb all fluids (Osborn, col. 5, lines 23-30, interlabial device 20 placed within interlabial space to intercept all body exudates). Additionally, Osborn emphasizes that the dimensions are important for providing a good fit (col. 5, lines 31-32). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Ito and Bogdanski as discussed with the dimension ratios as taught by Osborn in order to fit an interlabial device effectively.

Ito, Bogdanski and Osborn disclose the invention substantially as claimed, but are silent regarding the area of the sheet where the two bags are not provided as claimed. Bruemmer discloses an absorbent article (col. 1, lines 9-13, col. 3, lines 29-40, Figs. 1-4, diaper 10), comprising:

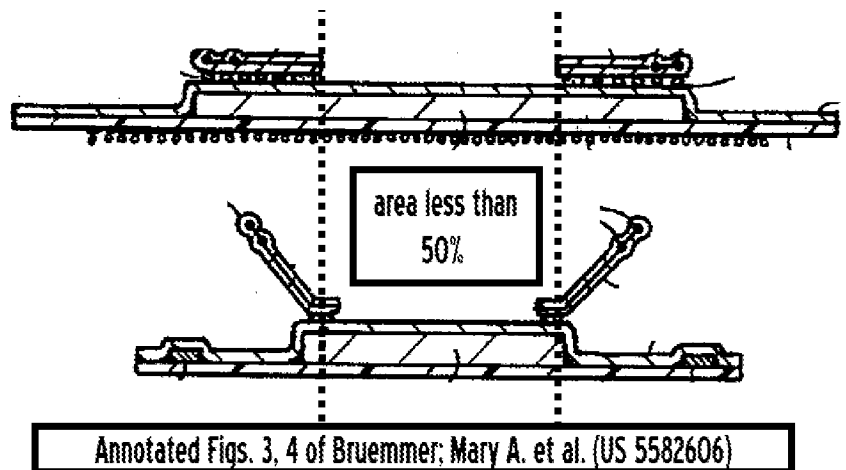
a leak preventer having a sheet (cols. 3-4, lines 29-40, 65-5, Figs. 3, 4, bodyside liner 14 comprising impermeable sheet);

two bags provided separately on right and left of an upper side of the sheet, col. 5, outer cover 12 and bodyside liner 14 forming pocket for absorbent core);

each of the two bags are liquid-impermeable (cols. 3-4, lines 65-5, bodyside liner made from plastic film); and

have an opening facing with each other (col. 3, lines 59-65, Figs. 3, 4, permeable portion of bodyside liner 14 between containment flaps 34);

absorbers having at least one layer and containing a super absorbent polymer and capable of absorbing a body fluid (col. 4, lines 53-63, Figs. 3, 4, portions of absorbent core 16 containing superabsorbent hydrogel-forming particles);



in which an area of the sheet where the two bags are not provided occupies 50% or less of an area of the entirety of the sheet in the leak preventer (cols. 6-7, lines 66-9, especially lines 6-9, Figs. 3, 4, narrow crotch between containment flaps 34 occupying 50% or less of an area of the entirety of the sheet in the leak preventer; see annotated Figs. 3, 4).

Here, Bruemmer provides a region of an absorbent article that defines a narrow opening to prevent escape of wastes from within a leak-preventing sheet (col. 7, lines

17-25, 39-47, narrow opening between containment flaps 34 containing wastes).

Therefore it would have been obvious to modify Ito, Bogdanski and Osborn with the narrowed region of Bruemmer in order to contain wastes within leak-preventing sheets.

5. Regarding claim 2, Ito discloses an absorbent article in which the two bags are symmetrical (Figs. 4-7, liquid- impermeable sheet 5 depicted as symmetrical).

Additionally, the storage zones 13, 13' of Bogdanski are depicted as symmetrical (Fig. 12).

6. Regarding claim 3, Ito discloses an absorbent article further including a connecting absorber that connects the absorbers provided in each of the two bags (col. 3, lines 31-35, Figs. 4-7, first absorbing layer 6 adjacent second absorbing layer 7).

7. Regarding claim 4, Ito discloses an absorbent article in which the absorbers are sheet absorbers (Figs. 4-7, first and second absorbing layers 6 and 7 formed as sheets).



8. Regarding claim 5, Ito discloses an absorbent article in which the sheet absorbers contain 50 wt% or more of the super absorbent polymer:

SAP basis weight = 20-100 g/m<sup>2</sup> (col. 4, lines 63-65, SAP scattered on fluff pulp)

Fiber basis weight = 35-40 g/m<sup>2</sup> (col. 5, lines 7-16, conventional fluff pulp basis weight)

$$\frac{\text{SAP basis weight}}{\text{Fiber basis weight}} = \frac{20 - 100 \text{ g/m}^2}{35 - 40 \text{ g/m}^2} = 0.5 - 2.86,$$

which overlaps the claimed range of 50 wt% or more of the super absorbent polymer.

9. Regarding claim 6, Ito discloses an absorbent article in which the sheet absorbers having multiple layers are provided in the bags (Figs. 4-7, first and second absorbing layers 6 and 7 placed in ends of liquid-impermeable sheet 5).

10. Regarding claims 11 and 12, Ito discloses an absorbent article further including a guide sheet bridging the absorbers provided in each of the two bags (col. 3, lines 24-30, Fig. 10, rayon staple layer 11);

in which the guide sheet allows transfer of a body fluid between the absorbers provided in each of the two bags (Fig. 10, rayon staple layer 11 comprising rayon and extending along second absorbing layer 7, therefore capable of transferring body fluid).

11. Regarding claims 13 and 14, Ito discloses:

[13] a guide sheet extending to partially or entirely cover a lower surface of each of the absorbers (Fig. 10, rayon staple layer 11 covering second absorbing layer 7).

Examiner interprets claim 13 broadly to require only that the guide sheet extends over a

lower surface of each of the absorbers. In other words, claim 13 does not explicitly call for a guide sheet that contacts, abuts or excludes layers between a guide sheet and absorber. Fig. 10 depicts layers 11 and 7 as co-extensive or overlapping, therefore layer 11 covers both the upper and lower layers of layer 7).

[14] guide sheet extends to further partially or entirely cover a side surface of each of the absorbers (Fig. 10, ends of rayon staple layer 11 covering ends of second absorbing layer 7. Here also, Examiner interprets claim 14 broadly to include the ends of layer 11 covering the ends of layer 7. Since Fig. 10 depicts the ends of layers 7 and 11 as overlapping, layer 11 at least partially covers the side surfaces of layer 7).

12. Regarding claim 18, Ito discloses an absorbent article further including a skin contact sheet at least between the two bags of the leak preventer (col. 3, lines 55-61, Figs. 8-10, porous surface sheet 8 between open ends of liquid-impermeable sheet 5);

13. Regarding claim 34, both Ito and Bogdanski lack the claimed W / L ratio of greater than 1.2 as claimed. Examiner cites Osborn as teaching values overlapping the claimed range. See discussion of claim 1 above regarding rationale and motivation to modify Ito and Bogdanski in view of Osborn.

14. Claims 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ito et al. (US 4364992) in view of Bogdanski; Michael Scott et al. (US 5830202) in view of Osborn, III; Thomas Ward (US 5895381) in view of Bruemmer; Mary A. et al. (US 5582606), further in view of Raley (US 4846813).

15. Regarding claims 15-17, Ito, Bogdanski, Osborn and Bruemmer disclose the invention as substantially claimed, but lack a guide sheet as claimed. Raley discloses an absorbent article (col. 4, lines 17-31, 35-40, Figs. 1-3) further comprising:

a guide sheet including a concavity-and-convexity-containing sheet member having apertures forming flow paths (col. 5, lines 6-13, col. 6, lines 22-27, Figs. 1-2, topsheet 13 having passages 14);

a guide sheet further including a hydrophilic diffusion sheet laminated under or combined to a lower surface of the concavity-and-convexity-containing sheet member (col. 5, lines 6-13, Figs. 1-2, absorbent / fibrous web 12 bonded to topsheet 13);

a guide sheet further including a body fluid impermeable sheet laminated under or combined to a lower surface of the hydrophilic diffusion sheet (col. 6, lines 32-37, col. 8, lines 20-22, claim 2, Figs. 1-2, backsheet 11 bonded to fibrous web 12).

Raley prevents flow-back of liquids absorbed within an absorbent web (cols. 1-2, lines 15-18, 64-10). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Ito, Bogdanski, Osborn and Bruemmer as discussed with the guide sheet as taught by Raley in order to prevent flow-back of absorbed liquids.

16. Claims 21, 23, 25 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ito et al. (US 4364992) in view of Bogdanski; Michael Scott et al. (US 5830202) in view of Osborn, III; Thomas Ward (US 5895381) in view of Bruemmer; Mary A. et al. (US 5582606), further in view of Finch et al. (US 5954201).

17. Regarding claims 21, 23 and 25, Ito, Bogdanski, Osborn and Bruemmer disclose the invention as substantially claimed, but lack a fitting member as claimed. Finch discloses an absorbent article such as a sanitary napkin (col. 3, lines 26-39, Figs. 1-3, absorbent article 10), further comprising:

a fitting member for fitting an absorbent article to a body surface of a wearer between two bags of a leak preventer (col. 4, lines 28-40, especially lines 28-30, Figs. 1-2, attachment device 50 extending on region between peripheral seal 18 of cover 12);

the fitting member provided under a lower side of a sheet of a leak preventer (Fig. 2, attachment device 50 provided under lower side of cover 12);

in which a front-to-rear length of the fitting member is longer than a front-to-rear length of the leak preventer (Fig. 2, attachment device 50 longer than absorbent 16).

Finch provides the advantage of attaching an absorbent article to a user's undergarment to maintain its position during use. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Ito, Bogdanski, Osborn and Bruemmer as discussed with the fitting member as taught by Finch in order to maintain an absorbent article in a correct position during use.

18. Regarding claim 31 Ito, Bogdanski, Osborn, Bruemmer and Finch disclose an absorbent article having the claimed structural elements. Examiner interprets the language "feces-receiving portion" as functional language or intended use, since this limitation adds no structure to the invention. To clarify, the invention of Ito, Bogdanski,

Osborn and Bruemmer and Finch is capable of receiving feces on a portion of the article.

19. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ito et al. (US 4364992) in view of Bogdanski; Michael Scott et al. (US 5830202) in view of Osborn, III; Thomas Ward (US 5895381) in view of Bruemmer; Mary A. et al. (US 5582606) in view of Finch et al. (US 5954201), further in view of Visscher et al. (US 5674214).

20. Regarding claim 22, Ito, Bogdanski, Osborn, Bruemmer and Finch disclose the invention as substantially claimed, but lack a fitting member provided on an upper side of the sheet of a leak preventer as claimed. Visscher discloses an absorbent article such as a sanitary napkin comprising a leak preventer (col. 2, lines 50-64, col. 5, lines 25-40 especially lines 32-36, Figs. 1, 4 sanitary napkin comprising backsheet 30), further comprising a fitting member provided on an upper side of the sheet of a leak preventer (col. 5, lines 32-36, Figs. 1, 4, spacing structure 44 provided on upper side of backsheet 30). Visscher improves contact between an absorbent article and wearer's body (col. 10, lines 9-30, especially lines 9-13). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Ito, Bogdanski, Osborn, Bruemmer and Finch as discussed with the fitting member as taught by Visscher in order to improve contact with a wearer's body.

***Response to Arguments***

21. Applicant's arguments filed 13 July 2010 and during an interview 09 July 2010 with respect to the rejection(s) of claim(s) 1-6,11-18,21-23,25,31 and 34 under 35 USC § 103 over Ito, Bogdanski, Sorebo, Raley, Finch, Visscher and Osborn have been fully considered and are persuasive. Therefore, the rejection is withdrawn. However, upon further consideration, a new ground(s) of rejection is made under 35 USC § 103 over Ito, Bogdanski, Bruemmer, Raley, Finch, Visscher and Osborn.

22. Applicant's amendments filed 13 July 2010 have canceled claim 9 and introduced new claim 35, and therefore do not present any additional claims without canceling a corresponding number of finally rejected claims.

23. Applicant contends that Sorebo fails to remedy the deficiencies of Ito, Bogdanski and Osborn, namely "in which an area of the sheet where the two bags are not provided occupies 50% or less of an area of the entirety of the sheet in the leak preventer."

Applicant asserts that motivation is lacking to combine Ito, Bogdanski and Osborn in view of Sorebo, since the sheets of Sorebo are external packaging. Instead, the inner individually packaged sheets maintain sterility, not necessarily the outer wallet-like structure cited in the rejection. Examiner cites Bruemmer as teaching this feature in the new grounds of rejection.

***Conclusion***

24. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- ◆ Schroer, Charles Frederick JR. et al. US 20050004543
- ◆ Drevik; Solgun US 7147628
- ◆ Wise; Brandon E. et al. US 6423045

25. Examiner has applied new grounds of rejection not necessitated by amendment. Therefore, the finality of the previous Office Action is withdrawn. This Office Action is non-final.

26. Any inquiry concerning this communication or earlier communications from the examiner should be directed to:

- 27. Adam Marcetich
- 28. Tel 571-272-2590
- 29. Fax 571-273-2590

30. The Examiner can normally be reached on 8:00am to 4:00pm Monday through Friday.

31. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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32. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Adam Marcetich/  
Examiner, Art Unit 3761